

REMARKS/ARGUMENTS

Applicants have carefully reviewed the Office Action mailed on April 15, 2005. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. Claims 1 and 3-20 remain pending. Claims 1 and 10 have been amended with this paper. Favorable consideration for the amendments and the following remarks is respectfully requested.

Claim Rejections under 35 U.S.C § 102

Claims 1, 3-5, 7, 9-12, 14, 16-18, and 20 were rejected under 35 U.S.C. 102(e) as being anticipated by Nwawka (U.S. Patent No. 6,036,638). This rejection is respectfully traversed.

As amended claim 1 recites in part:

“surgical tool including an elongate body and a first leg having a first end engageable with the inner surface of the tubular structure and a second leg having a second end engageable with the inner surface of the tubular structure, said first and second ends being moveable away from each other to apply a radially outwardly directed force to the inner surface of the tubular structure and cause expansion of the tubular structure to increase a cross-sectional area of the path along a portion of the path; and

an actuator configured to move axially with the elongate body of the surgical tool to move said first and second legs away from each other.”

Nwawka does not appear to teach at least these limitations of claim 1. Applicants believe that claim 1 is patentable over Nwawka. As claims 3-5, 7, and 9 depend from claim 1 and include additional limitations, Applicants believe that claims 3-5, 7, and 9 are also patentable over Nwawka. Withdrawal of the rejection is respectfully requested.

As amended claim 10 recites in part “an elongate member structured to expand the tubular structure, the elongate member having a first end and a second end and an intermediate member disposed between the first and second ends” Nwawka does not appear to teach each and every limitation of claim 1. Applicants believe that claim 10 is patentable over Nwawka. As claims 11, 12, and 14 depend from claim 1 and include additional limitations, Applicants believe that claims 11, 12, and 14 are also patentable over Nwawka. Withdrawal of the rejection is respectfully requested.

Nwawka does not appear to teach each and every limitation of claim 16. Claim 16 recites:

“a surgical tool structured to expand the tubular structure, the surgical tool including
a shaft having first and second ends;
a handle pivotally connected to the first end of the shaft, the handle configured to move between a first, expanded, configuration and a second, contracted configuration; and
first and second jaws pivotally connected to the second end of the shaft, the first and second jaws configured to move between a first, contracted configuration and a second, expanded configuration, the first and second jaws engageable with the inner surface of the tubular structure;
wherein contracting the handle causes expansion of the first and second jaws.”

The Office Action does not state which elements of Nwawka teach the limitations of claim 16. Assuming, for the sake of argument, that the limitation of “first and second jaws pivotally connected to the second end of the shaft” occurs at pin 76 of Nwawka, only one jaw (upper arm 40) could be considered to be pivotally connected at pin 76. (“The proximal end 44 of the upper arm 40 is pivotally connected to the first and second pins 74, 76.” (Fig. 1; col. 4 lines 63-65).) On the other hand, assuming, for the sake of argument, that the limitation of “first and second jaws pivotally connected to the second end of the shaft” occurs at pivot mechanism 50 of Nwawka, at best only the second jaw (lower arm 30) could be deemed to pivotally connect at pivot mechanism 50. (“The lower arm 30 comprises a blade 32 having a proximal end 34, a distal end 36, and a handle portion 38 which is integrally connected to the proximal end 34 of the blade 32.” (Fig. 1; col. 4, lines 27-29).) Also, according to claim 16, the handle is pivotally connected to the *first end* of the shaft. The only apparent possible locations for a pivotal connection of a handle, according to Nwawka, would be pin 76 which was previously established to be at the *second end* of the shaft since the first jaw is pivotally connected there, or at pivot mechanism 50 which would also be the *second end* since the second jaw was connected through the handle portion 38. (Fig. 1).

Nwawka, therefore, does not appear to teach each and every limitation of claim 16. Applicants believe claim 16 is patentable over Nwawka. As claims 17, 18, and 20

depend from claim 16 and include additional limitations, Applicants believe that claims 17, 18, and 20 are also patentable over Nwawka. Withdrawal of the rejection is respectfully requested. If the rejection is not withdrawn, Applicants respectfully request that the next Office Action be non-final and state which elements of Nwawka teach which limitations of claim 16 so that a proper response may be made.

Claim Rejections under 35 U.S.C § 103

Claims 6, 8, 13, 15, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nwawka (U.S. Patent No. 6,036,638) in view of Gerrone (U.S. Patent No. 5,312,351). This rejection is respectfully traversed.

As mentioned above, Nwawka does not appear to teach each and every limitation of claim 1. Gerrone does not appear to cure the failings of Nwawka. Claim 1, therefore, is believed patentable over Nwawka in view of Gerrone. As claims 6 and 8 depend from claim 1 and add further limitations thereto, Applicants also believe that claim 6 and 8 are patentable over Nwawka in view of Gerrone. Withdrawal of the rejection is respectfully requested.

As mentioned above, Nwawka does not appear to teach each and every limitation of claim 10. Gerrone does not appear to cure the failings of Nwawka. Claim 10, therefore, is believed patentable over Nwawka in view of Gerrone. As claims 13 and 15 depend from claim 1 and add further limitations thereto, Applicants also believe that claims 13 and 15 are patentable over Nwawka in view of Gerrone. Withdrawal of the rejection is respectfully requested.

As mentioned above, Nwawka does not appear to teach each and every limitation of claim 16. Gerrone does not appear to cure the failings of Nwawka. Claim 16, therefore, is believed patentable over Nwawka in view of Gerrone. As claim 19 depends from claim 16 and adds further limitations thereto, Applicants also believe that claim 19 is patentable over Nwawka in view of Gerrone. Withdrawal of the rejection is respectfully requested.


CONCLUSION

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,
JAMES J. PAGLIUCA et al.

By their attorney,

Date: June 27, 2008



J. Scot Wickhem, Reg. No. 41,376
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Telephone: (612) 677-9050
Facsimile: (612) 359-9349